IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3581 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SHANKERLAL J. MEWADA

Appearance:

1. Special Civil Application No. 3581 of 1989

MR KN RAVAL for Petitioner No. 1

MR HARDIK C RAWAL for Petitioner No. 1

MR MH SHAIKH for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 28/06/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Hardik Raval for the petitioner Corporation and Mr. D.J. Bhatt, learned advocate for the respondent workman. By way of this

petition, the petitioner has challenged the award made by the Industrial Tribunal, Ahmedabad in Reference (IT) NO. 143 of 1988 dated 17th October, 1988 wherein the Tribunal has modified the punishment imposed by the corporation from putting the respondent workman concerned in the minimum time scale to that of stoppage of two annual increments without cumulative effect. While issuing rule on this petition, this court has not granted any interim stay against the operation of the award in question.

Learned advocate Mr. Raval appearing for the petitioner has submitted that since the tribunal has recorded the conclusion that the departmental inquiry held against the respondent workman concerned is legal and valid and the findings are also legal and valid, the tribunal has not been justified in interfering with the punishment imposed by the second appellate board. He has submitted that the charge levelled against the respondent was to the effect that he recovered fares from three passengers of Rs.7.80 each and issued short ticket of Rs.2.60 ps. to each of the passengers. In view of these facts, according to his submission, the modification of punishment by the tribunal is contrary to law. It is further submitted by him that the punishment of stoppage of two annual increments without cumulative effect imposed by the tribunal is nothing but fine imposed upon the workman because it is having no recurring effect and till continue only for a period of two years. Thus, according to his submission, while interfering with the punishment imposed by the appellate board of the petitioner corporation, the tribunal ought to have imposed some serious punishment having recurring effect.

On the other hand, learned advocate Mr.Bhatt appearing for the respondent workman has submitted that the tribunal has considered the question whether the punishment imposed upon the workman is disproportionate or not and considering the past record of the respondent wherein no defaults were committed by the workman and considering the effect of punishment imposed upon the workman by the appellate authority in putting him in the minimum time scale of conductor, the tribunal considered that the workman was losing five to 7 increments with permanent effect,upto the date of his retirement and, therefore, the tribunal was right in modifying the order of punishment and in doing so, the tribunal has not committed any error which would require interference of this Court. As regards the submission made by Mr. Raval that the tribunal ought to have imposed some serious punishment, Mr.Bhatt has submitted that if this Court ultimately feels that the punishment imposed by the

tribunal is inadequate, then, this court may impose some reasonable punishment by modifying the award in question to that effect.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question. The tribunal has come to the conclusion that the departmental inquiry initiated against the respondent is legal and valid and the reasons have been given in para 6. Thereafter,the tribunal has examined the question of findings and ultimately, the tribunal has recorded the conclusion that the findings recorded by the Inquiry Officer are also legal and proper. Thus, after recording the finding that the departmental inquiry initiated against the workman is legal and valid and the findings recorded therein by the inquiry officer are also legal and valid, the tribunal has examined the question of punishment, looking to the gravity of misconduct, whether the punishment imposed by the appellate authority is proportionate or not. While considering this aspect, the tribunal has also considered that the respondent joined the service in the year 1979 and because of the punishment imposed by the appellate authority, he was losing five to seven annual increments with cumulative effect. Thus, considering the past record and also considering the length of service of the respondent workman, the tribunal was of the view that the punishment of putting him in the minimum of the time scale of conductor category was harsh and after examining the past record, one default was noticed by the corporation and, therefore, the tribunal modified the punishment by imposing the punishment of stoppage of two annual increments without cumulative effect.

Considering the punishment of stoppage of two increments without cumulative effect, according to my opinion, in the facts and circumstances of the case, such punishment comes to fine of about Rs.200.00 alone and, therefore, in such a case wherein the short tickets were issued by the respondent, according to my opinion, some more serious punishment having recurring effect ought to have been imposed by the tribunal while modifying the punishment imposed by the appellate authority of the corporation. To that extent,the award made by the tribunal is required to be modified. According to my opinion, in the facts and circumstances of the present case, the punishment of stoppage of two increments without cumulative effect is required to be converted into the punishment of stoppage of two increments with cumulative effect.

Accordingly, this petition is partly allowed. The award in question made by the Industrial Tribunal, Ahmedabad in Reference (IT) NO. 143 of 1988 dated 17th October, 1988 is modified to the effect that instead of punishment of stoppage of two annual increments without cumulative effect, now, the petitioner is required to impose punishment of stoppage of two annual increments with cumulative effect. Rest of the award made by the tribunal has not been disturbed by this Court. Rule is made absolute in terms indicated hereinabove with no order as to costs.

28.6.2002. (H.K. Rathod,J.)

Vyas